

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:
of	:
JEFFREY A. CEREFICE	: DETERMINATION
	DTA NO. 811496
for Revision of a Determination or for Refund	:
of Sales and Use Taxes under Articles 28 and 29	:
of the Tax Law for the Quarters Ending	:
November 30, 1988, November 30, 1989,	:
February 28, 1990 and August 31, 1990.	:

Petitioner, Jeffrey A. Cerefice, 5327 D South Harvard, Tulsa, Oklahoma 74135, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the quarters ending November 30, 1988, November 30, 1989, February 28, 1990 and August 31, 1990.

On November 24, 1994 and December 2, 1994, respectively, petitioner, appearing pro se, and the Division of Taxation by William F. Collins, Esq. (Andrew S. Haber, Esq., of counsel) consented pursuant to 20 NYCRR 3000.8 to have the controversy determined on submission without hearing. The Division of Taxation submitted documents by letter dated January 4, 1995. Petitioner submitted documents by letter dated January 25, 1995. Briefs which were scheduled for March 1, 1995 and April 1, 1995 were not received. After review of all the documents, Nigel G. Wright, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner is liable as an officer for the sales taxes of Tried and True Rent a Car, Inc.

FINDINGS OF FACT

(a) Petitioner, Jeffrey A. Cerefice, was the president of Tried and True Rent a Car, Inc.

(b) Tried and True Rent a Car was located at 204 West 101st Street, New York City. Its business was auto rentals. It was in the business eight years but closed in 1990 due to the high cost of the repair of damaged cars which, under recent legislation, could not be passed on to its customers.

The sales tax return for the quarter ending November 30, 1988 (received by the Division of Taxation ["Division"] on October 30, 1989) shows tax due of \$12,067.93.

The following notices of determination and demands for payment of sales and use taxes due were issued by the Division on May 24, 1991:

(a) For the sales tax quarter ending November 30, 1988 in the amount of \$12,067.93, plus penalty of \$3,620.19 and interest of \$4,074.58, for a total amount due of \$19,762.70. The amount of tax due was taken from the no remittance return filed on October 30, 1989 (Finding of Fact "2").

(b) For the sales tax quarter ending November 30, 1989 in the amount of \$28,542.60, plus penalty of \$4,769.81 and interest of \$1,451.54, for a total amount due of \$34,763.95.

(c) For the sales tax quarter ending February 28, 1990 in the amount of \$36,690.93, plus penalty of \$5,136.72 and interest of \$1,531.96, for a total amount due of \$43,359.61.

(d) For the sales tax quarter ending August 31, 1990 in the amount of \$11,014.69, plus penalty of \$1,431.90 and interest of \$354.88, for a total amount due of \$12,801.47.

On July 10, 1990, sales tax returns were late filed as follows: for the month of November 1989 showing tax due of \$3,040.13; for the month of December 1989 showing tax due of \$2,817.00; for the month of January 1990 showing tax due of \$2,580.00; for the month of February 1990 showing tax due of \$2,394.00; and for the month of June 1990 showing tax due of \$842.00.

The notices of determination issued were adjusted at a conference on June 23, 1991 downwards to conform to the figures shown on the late filed returns as follows: for the quarter ending November 30, 1990 from \$28,542.60 to \$12,423.26; for the quarter ending February 28, 1990 from \$36,690.93 to \$8,650.70; and for the quarter ending August 31, 1990 from \$11,014.69 to \$842.00.

Petitioner has not denied that he was responsible for the sales taxes of Tried and True Rent a Car, Inc.

Petitioner has not challenged the figures used in either the notices of determination as originally issued or as adjusted after conference. He raises only his inability to pay the assessments as a reason for cancelling them.

CONCLUSIONS OF LAW

A. Petitioner is liable for the sales taxes of his employer, Tried and True Rent a Car, Inc. Tax Law § 1133(a) specifically provides for the personal liability of those

responsible for collecting sales taxes. Petitioner is such a person as defined in Tax Law § 1131(1). There is no provision in the Tax Law under which the Division of Tax Appeals may cancel an assessment based solely on inability to pay.

B. The petition of Jeffrey A. Cerefice is denied and the notices of determination are sustained.

DATED: Troy, New York
September 21, 1995

/s/ Nigel G. Wright

ADMINISTRATIVE LAW JUDGE